

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GREGORY MILLER,)	CASE NO. 1:07 CV 1884
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	Magistrate Judge George J. Limbert
)	
Defendant.)	<u>MEMORANDUM OPINION</u>

This matter is before the Court upon the Report and Recommendation of Magistrate Judge George J. Limbert (Document #20). On June 25, 2007, Plaintiff Gregory Miller, filed his Complaint pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3), challenging the final decision of the Commissioner of Social Security denying his claim for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”). Pursuant to Local Rule 72.2(b), the case was referred to Magistrate Judge Limbert.

On June 17, 2008, the Magistrate Judge issued his Report and Recommendation. The Magistrate Judge recommends that the final decision by the Commissioner of Social Security denying Plaintiff’s request for Disability Insurance Benefits and Supplemental Security Income be reversed and the case be remanded, for further factfinding, analysis, and articulation.

On June 26, 2008, Defendant, Commissioner of the Social Security Administration, filed

a response to the Magistrate Judge's Report and Recommendation, stating that the Commissioner will not file objections to the Report and Recommendation. (Docket #21.)

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case de novo.

FED. R. CIV. P. 72(b) states:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made; it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).

The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings."

The standard of review for a magistrate judge's report and recommendation is distinct from the standard of review for the Commissioner of Social Security's decision regarding benefits. Judicial review of the Commissioner's decision, as reflected in the decisions of the ALJ, is limited to whether the decision is supported by substantial evidence. *See Smith v. Secretary of Health and Human Servs.*, 893 F.2d 106, 108 (6th Cir. 1989). "Substantial evidence exists when a reasonable mind could accept the evidence as adequate to support the challenged conclusion, even if that evidence could support a decision the other way." *Casey v. Secretary of Health and Human Servs.*, 987 F.2d 1230, 1233 (6th Cir. 1993) (citation omitted).

Conclusion

This Court has reviewed the Magistrate Judge's Report and Recommendation *de novo*. After careful evaluation of the record, this Court adopts the findings of fact and conclusions of law of the Magistrate Judge as its own. This Court finds that Magistrate Judge Limbert properly recommended that the case be remanded for further factfinding, analysis, and articulation. Accordingly, the Report and Recommendation of Magistrate Judge Limbert (Document # 20) is hereby ADOPTED and the decision of the Commissioner is hereby VACATED and the case REMANDED for proceedings consistent with the findings described above.

IT IS SO ORDERED.

s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: July 8, 2008